

## CHAPTER 6

### PUBLIC TRANSPORTATION CORPORATIONS

This chapter is designed to summarize certain laws, regulations and uniform compliance guidelines relevant to public transportation corporations. Please refer to the Indiana Code and other related documents for a complete listing of laws and regulations governing public transportation corporations. See chapters 10 through 23 of this manual for additional Accounting and Uniform Compliance Guidelines.

#### BOARD OF DIRECTORS

A public transportation corporation is under the control of a board of directors, which shall exercise the executive and legislative powers of the corporation.

The board of directors of a public transportation corporation in a city consists of either five (5) or seven (7) directors, as determined by the city legislative body.

The board of directors of a public transportation corporation in a town consists of either five (5) or seven (7) directors, as determined by the town legislative body. All the directors shall be appointed by the legislative body.

The appointing authorities shall make appointments to the board of directors under IC 36-9-4-15 or 36-9-4-16 so that the number of directors belonging to either of the two (2) major political parties does not exceed the number belonging to the other by more than one (1). If the appointing authorities cannot agree on the manner in which this will be done, the municipal executive shall make the appointment that results in one (1) party having more directors than the other. [IC 36-9-4-14 through IC 36-9-4-17]

#### COMPENSATION

A director of a public transportation corporation is entitled to:

- (1) Compensation of not more than one thousand two hundred dollars (\$1,200) annually, as determined in the budget; and
- (2) Reimbursement for any expenses incurred in the interest of the board of directors. [IC 36-9-4-20]

#### MEETINGS

The board of directors of a public transportation corporation shall, by rule, provide for regular meetings to be held at designated intervals throughout the year.

The board shall convene in a special meeting whenever such a meeting is called by the chairman or by a majority of the directors. Notice of a special meeting must be given by publication in accordance with IC 5-3-1.

The board shall keep its meetings open to the public.

A majority of the board of directors of a public transportation corporation constitutes a quorum for a meeting.

The board may act officially by affirmative vote of a majority of those present at the meeting at which the action is taken.

The board shall keep a written record of its proceedings available for public inspection in its office. The record must include the aye and nay vote on the passage of each item of business.

The board shall adopt rules of procedure under which its meetings are to be held. The board may suspend these rules by unanimous vote of the members present at any meeting, but it may not suspend them beyond the meeting at which the suspension occurs.

The board has the same power to supervise its internal affairs as other municipal administrative bodies. [IC 36-9-4-22 and 36-9-4-23]

## ORDINANCES

A director of a public transportation corporation may introduce a proposed draft of an ordinance at a meeting of the board of directors. A director who introduces a proposed draft of an ordinance must provide, at the time of introduction, a written copy of the proposed draft. The board must place the date of introduction and a distinguishing number on each proposed draft of an ordinance.

The board must publish a notice that the proposed ordinance is pending final action by the board. The notice must be published in accordance with IC 5-3-1. However, notice of an ordinance establishing a budget must be given in accordance with the statutes governing budgets of the municipality served by the corporation.

The board must include in the notice reference to the subject matter of the proposed ordinance and the time and place a hearing on it will be held, and must indicate that the proposed draft of an ordinance is available for public inspection at the office of the board. The board may include in one (1) notice a reference to the subject matter of each draft of an ordinance that is pending and for which notice has not previously been given. The reference to the subject matter is adequate if it is sufficient to advise the public of the general subject matter of the proposed ordinance.

The board must, not later than the date of notice of the introduction of a proposed ordinance, place five (5) copies of the proposed draft on file in the office of the board for public inspection. [IC 36-9-4-24]

At the meeting for which notice has been given under IC 36-9-4-24, the board of directors of a public transportation corporation may take final action on the proposed ordinance or may postpone final consideration of it to a designated meeting in the future without giving [additional] notice. Before adopting an ordinance, the board must give an opportunity to any person present at the meeting to give testimony or evidence for or against the proposed ordinance, under the rules as to the number of persons who may be heard and the time limits adopted by the board.

Whenever the board adopts an ordinance, it shall designate the effective date of the ordinance at the same meeting. If the board fails to designate the effective date of the ordinance in the record of the proceedings of the board, the ordinance takes effect fourteen (14) days after its passage.

Whenever the board adopts an ordinance, it shall cause copies of the ordinance to be made available to the public. [IC 36-9-4-25]

## CONTROLLER

The board of directors of a public transportation corporation shall appoint a qualified person to serve as controller. The controller is the chief fiscal officer of the corporation, and he must give bond in the sum and with the conditions prescribed by the board and with surety to the approval of the board.

All money payable to the public transportation corporation shall be paid to the controller, and he shall deposit it under IC 5-13-6. The controller shall deposit this money in the depositories and in the accounts that the board designates by ordinance.

The controller shall keep an accurate account of all appropriations made and all taxes levied by the public transportation corporation, all money owing or due to the corporation, and all money received and disbursed by the corporation, and he shall preserve all vouchers for payments and disbursements.

The controller shall issue all warrants for the payment of money from the funds of the public transportation corporation, but he may not issue a warrant for the payment of a claim until the claim has been allowed in accordance with the procedure prescribed by the rules of the board. All warrants must be countersigned by the chairman of the board.

If the controller is called upon to issue a warrant, he may require evidence that the amount claimed is justly due, and for that purpose he may summon before him any officer, agent, or employee of the public transportation corporation and examine him on oath or affirmation relating to the warrant. The controller may administer the oath or affirmation.

The board may authorize the controller to pay a per diem in advance to a public transportation employee or board member who will attend a training session or other special business meeting required as a duty of the public transportation employee or board member.

Each year, and more often if required by the board, the controller shall submit his records of account as controller for audit to the certified public accountant or firm of certified public accountants designated by the board. The certified public accountant or firm of certified public accountants shall submit to the board a certified report of the records of account, exhibiting the revenues, receipts, and disbursements, the sources from which the revenues and funds are derived, and the manner in which they have been disbursed. [IC 36-9-4-27]

#### OPERATION, MAINTENANCE AND USE OF SYSTEM

Upon acquisition of the necessary property by a public transportation corporation, the board of directors of the corporation may:

- (1) Operate and maintain the system;
- (2) Lease the system to any operator; or
- (3) Contract for the use of the system by any operator.

The board may also contract with any organization that has executive personnel with experience and skill applicable to the superintendence of the operation and maintenance of an urban mass transportation system. The contract must require the organization to furnish its services and the services of its personnel for the superintendence of the system.

The maximum term of a contract or lease executed under this section is twenty-five (25) years.

A contract or lease executed under this section must be confirmed by ordinance of the board. [IC 36-9-4-29]

### POWERS OF THE BOARD

The board of directors of a public transportation corporation may:

- (1) Acquire by grant, purchase, gift, lease, or otherwise; and
- (2) Hold, use, sell, lease, or dispose of;

real and personal property, licenses, patents, rights, and interests necessary or convenient for the exercise of its powers.

The board of directors of a public transportation corporation may exercise the power of eminent domain for the condemnation of any interest in real or personal property for use within the taxing district of the corporation. Proceedings for the condemnation of property by the board are governed by IC 32-24-1 to the extent it is not in conflict with IC 36-9-4. The board may not institute such proceedings until it has adopted an ordinance generally describing the property to be acquired, declaring that the public interest and necessity require the acquisition by the corporation of the property involved, and declaring that the acquisition is necessary for the establishment, development, extension, or improvement of the system. The ordinance is conclusive evidence of the public necessity of the proposed acquisition and that the proposed acquisition is planned in a manner most compatible with the greatest public good and the least private injury.

The board of directors of a public transportation corporation may contract with any person upon the terms and conditions the board considers best for the corporation including the following:

- (1) Contracting for self-insurance protection of its property or liability under IC 34-13-3.
- (2) Engaging in commissions or entering into agreements for the mutual insurance or sharing of risks for liability or property damage.
- (3) Agreeing to join with other municipal corporations for the mutual risk sharing of losses due to casualty or acts of God.

The board of directors of a public transportation corporation shall, by ordinance, make rules governing the use, operation, and maintenance of the urban mass transportation system. The board may determine all rates, routings, and hours and standards of service and may change them whenever the board considers a change advisable. However, the board's powers under this section are subject to regulation by the Department of State Revenue as provided by IC 36-9-4-58.

The board of directors of a public transportation corporation may, in the name of the corporation, sue or be sued in court. Service of process shall be made by service upon the secretary of the board, and notice must be served upon the secretary in the manner and form required by IC 34-13-3.

The board of directors of a public transportation corporation may make traffic surveys, population surveys, and any other surveys and studies it considers useful in the operation of urban mass transportation systems. [IC 36-9-4-30 through IC 36-9-4-38]

## ACQUISITION OF FUNDS

A municipality or a public transportation corporation that expends money for the establishment or maintenance of an urban mass transportation system may acquire the money for these expenditures:

- (1) By issuing bonds under IC 36-9-4-43 or 36-9-4-44;
- (2) By borrowing money made available for such purposes by any source;
- (3) By accepting grants or contributions made available for such purposes by any source;
- (4) In the case of a municipality, by appropriation from the general fund of the municipality, or from a special fund that the municipal legislative body includes in the municipality's budget; or
- (5) In the case of a public transportation corporation, by levying a tax under IC 36-9-4-49 or by recommending an election to use revenue from the county option income taxes.

Money may be acquired for the purpose of exercising any of the powers granted by or incidental to IC 36-9-4, including:

- (1) Studies under IC 36-9-4-4, 36-9-4-9, or 36-9-4-11;
- (2) Grants in aid;
- (3) The purchase of buses or real property by a municipality for lease to an urban mass transportation system, including the payment of any amount outstanding under a mortgage, contract of sale, or other security device that may attach to the buses or real property;
- (4) The acquisition by a public transportation corporation of property of an urban mass transportation system, including the payment of any amount outstanding under a mortgage, contract of sale, or other security device that may attach to the property;
- (5) The operation of an urban mass transportation system by a public transportation corporation, including the acquisition of additional property for such a system; and
- (6) The retirement of bonds issued and outstanding. [IC 36-9-4-42]

## ISSUANCE OF BONDS

If the legislative body of a municipality decides to issue bonds to obtain all or part of the money to be expended for the establishment and maintenance of an urban mass transportation system under this chapter, the legislative body may issue the bonds of the municipality in the same manner as bonds for the general purposes of the municipality. However, the bonds may be sold to the federal government at private sale and without a public offering. [IC 36-9-4-43]

If the board of directors of a public transportation corporation decides to issue bonds to obtain all or part of the money to be expended for the establishment and maintenance of an urban mass transportation system under this chapter, the board shall adopt an ordinance directing the issuance of the bonds. The board shall certify a copy of the ordinance to the controller of the corporation, who shall then prepare the bonds.

The bonds must be executed by the chairman of the board and attested by the controller of the corporation.

The controller is responsible for the sale of the bonds.

Except as otherwise provided in this section, the bonds shall be issued in the same manner as bonds for the general purposes of the municipality served by the public transportation corporation. However, the bonds may be sold to the federal government at private sale and without a public offering.

In addition to the general power to issue bonds for the establishment and maintenance of a system, the board may issue bonds specifically:

- (1) For the payment of any judgment against the corporation; and
- (2) To establish or maintain a program of self-insurance or mutual insurance.

Bonds issued:

- (1) Shall be issued in the denomination;
- (2) Are payable over a period not to exceed thirty (30) years from the date of the bonds; and
- (3) Mature;

as determined by the ordinance authorizing the bond issue.

All bonds issued, the interest on them, and the income from them are exempt from taxation to the extent provided by IC 6-8-5-1.

The provisions of IC 6-1.1-20 relating to filing petitions requesting the issuance of bonds and giving notice of those petitions, giving notice of a hearing on the appropriation of the proceeds of the bonds, the right of taxpayers to appear and be heard on the proposed appropriation, the approval of the appropriation by the Indiana Department of Local Government Finance, and the right of taxpayers to remonstrate against the issuance of bonds apply to the issuance of bonds under IC 36-9-4.

A suit to question the validity of bonds issued or to prevent their issue and sale may not be instituted after the date set for the sale of the bonds, and the bonds are incontestable after that date. [IC 36-9-4-44 and IC 36-9-4-45]

#### SPECIAL TAX LEVY TO PAY BONDS

The board of directors of a public transportation corporation that issues bonds under this chapter shall levy a special tax each year upon all the property within the taxing district of the corporation. The tax shall be levied in such a manner as to meet and pay the principal of the bonds as they mature, together with all accruing interest.

The county treasurer shall collect the tax in the same manner as other taxes are collected. As the treasurer collects the tax, he shall remit it to the controller of the public transportation corporation.

In determining the amount of the levy, the board of directors shall consider any surplus of accumulated revenue derived from the operation of the urban mass transportation system, above the sum considered necessary to be applied upon or reserved for the payment of the operating and capital expenditures of the system, including expenditures for the replacement of and additions to the property of the system and reserves established for the depreciation of the property of the system. If the board finds that this surplus is sufficient, it may apply all or part of the surplus to the payment of the principal of the bonds, together with the interest on them. [IC 36-9-4-46]

### TAX ANTICIPATION WARRANTS

The board of directors of a public transportation corporation may:

- (1) Borrow money in anticipation of receipt of the proceeds of taxes that have been levied by the board and have not yet been collected; and
- (2) Evidence this borrowing by issuing warrants of the corporation.

The money that is borrowed may be used by the corporation for payment of principal and interest on its bonds or for payment of current operating expenses.

The warrants:

- (1) Bear the date or dates;
- (2) Mature at the time or times on or before December 31 following the year in which the taxes in anticipation of which the warrants are issued are due and payable;
- (3) Bear interest at the rate or rates and are payable at the time or times;
- (4) May be in the denominations;
- (5) May be in the forms, either registered or payable to bearer;
- (6) Are payable at the place or places, either inside or outside Indiana;
- (7) Are payable in the medium of payment;
- (8) Are subject to redemption upon the terms, including a price not exceeding par and accrued interest; and
- (9) May be executed by the officers of the corporation in the manner;

provided by resolution of the board of directors. The resolution may also authorize the board to pay from the proceeds of the warrants all costs incurred in connection with the issuance of the warrants.

The warrants may be authorized and issued at any time after the board of directors levies the tax or taxes in anticipation of which the warrants are issued.

The warrants may be sold for not less than par value after notice inviting bids has been published in accordance with IC 5-3-1. The board of directors may also publish the notice inviting bids in other newspapers or financial journals.

After the warrants are sold, they may be delivered and paid for at one (1) time or in installments.

The aggregate principal amount of warrants issued in anticipation of and payable from the same tax levy or levies may not exceed eighty percent (80%) of the levy or levies, as the amount of the levy or levies is certified by the Indiana Department of Local Government Finance, or as is determined by multiplying the rate of tax as finally approved by the total assessed valuation of taxable property within the taxing district of the public transportation corporation as most recently certified by the county auditor.

For purposes of IC 36-9-4-47, taxes for any year are considered to be levied when the board of directors adopts the ordinance prescribing the tax levies for the year. However, warrants may not be delivered and paid for before final approval of a tax levy or levies by the County Board of Tax Adjustment (or, if appealed, by the Indiana Department of Local Government Finance) unless the issuance of the warrants has been approved by the Indiana Department of Local Government Finance.

The warrants and the interest on them are not subject to IC 36-9-4-43 and 36-9-4-44 and are payable solely from the proceeds of the tax levy or levies in anticipation of which the warrants were issued. The authorizing resolution must pledge a sufficient amount of the proceeds of the tax levy or levies to the payment of the warrants and the interest.

All actions of the board of directors under this section may be taken by resolution, which need not be published or posted. The resolution takes effect immediately upon its adoption by a majority of the members of the board of directors.

An action to contest the validity of any tax anticipation warrants may not be brought later than ten (10) days after the sale date. [IC 36-9-4-47]

#### CUMULATIVE TRANSPORTATION FUND (EFFECTIVE UNTIL MARCH 1, 2001)

A cumulative transportation fund to provide money for the acquisition of buses and for the planning, establishment, and maintenance of routes and schedules to assist in implementing IC 36-9-4 may be established under IC 6-1.1-41 by:

- (1) The legislative body of a municipality that:
  - (A) Is making grants to an urban mass transportation system; or
  - (B) Has purchased buses for operation under lease by an urban mass transportation system; or
- (2) The board of directors of a public transportation corporation.

In addition to other notices required under IC 6-1.1-41, notices of hearings under IC 6-1.1-41 must be given to the following:

- (1) The municipal executive, for a tax levy by a municipality; and
- (2) The chairman of the board of directors, for a tax levy by a public transportation corporation.

A tax levy to finance the cumulative transportation fund may be levied in compliance with IC 6-1.1-41. The tax levied under this section may not exceed six and sixty-seven hundredths cents (\$0.0667) on each one hundred dollars (\$100) of taxable property within the corporation boundaries of the municipality or the taxing district of the public transportation corporation, as the case may be. [IC 36-9-4-48]



### TAX LEVY FOR GENERAL EXPENSES

For each year in which it is anticipated that the total amount available to a public transportation corporation will be insufficient to defray the expenses incurred by the corporation, the board of directors of the corporation shall levy a special tax upon all the property within the taxing district of the corporation at the rate required to defray such expenses. The tax must be based upon the budget formulated and filed by the board under IC 36-9-4.

The county treasurer shall collect the tax levied under this section in the same manner as other taxes are collected. As the treasurer collects the tax, he shall remit it to the controller of the public transportation corporation. [IC 36-9-4-49]

### ANNUAL BUDGET

The board of directors of a public transportation corporation shall prepare an annual budget for the expenditures of the corporation.

IC 36-9-4-51(b) applies only when a municipality, having operated an urban mass transportation system under a department of municipal government, establishes a public transportation corporation under IC 36-9-4-10 to maintain that system. The annual operating and maintenance budget for the corporation shall be subject to review and modification by the legislative body of the municipality.

A public transportation corporation may not impose a property tax levy on property that it has not taxed before January 1, 1982, and that lies outside the corporate boundaries of the municipality without the approval of the fiscal body or county council of the county in which the municipality is located.

The budget and any tax levies prepared by the board shall be prepared and submitted at the same time, in the same manner, and with the same notice as is prescribed by IC 6-1.1-17 for the annual budget of the municipality. The County Tax Adjustment Board and the Indiana Department of Local Government Finance may review the budget and tax levies in the same manner by which they review budgets and tax levies of the municipality. [IC 36-9-4-51]

### AUDIT AND SUPERVISION OF RECORDS BY BOARD OF ACCOUNTS - ALTERNATIVE RECORD SYSTEM

The books, accounts, records, and transactions of a public transportation corporation are subject to examination, audit, and supervision by the State Board of Accounts to the same extent as the books, accounts, records, and transactions of other municipal corporations and their officers and departments. However, in lieu of the system of accounts prescribed by the State Board of Accounts, a public transportation corporation may maintain its books, accounts, records, and transactions according to the financial accounting and reporting elements system, known as "Project Fare," that is established by the federal Urban Mass Transportation Administration. [IC 36-9-4-53]

### IMPROVEMENT RESERVE FUND

The board of directors of a public transportation corporation may, by resolution, establish an improvement reserve fund for the purpose of accumulating money over two (2) or more fiscal years for the following:

- (1) The purchase of specified real property.
- (2) The purchase of specified major equipment, including buses.
- (3) The making of improvements to real property owned by the public transportation corporation.

Transfers that are placed in an improvement reserve fund established under this section must be included in the annual budget of the public transportation corporation.

The board of directors of a public transportation corporation may make an expenditure of money from an improvement reserve fund only after:

- (1) Holding a public meeting in accordance with IC 36-9-4-22;
- (2) The adoption by the board of a resolution under IC 36-9-4-57(d); and
- (3) Approval by the Indiana Department of Local Government Finance.

A resolution for expenditure from an improvement reserve fund established under this section must include the following:

- (1) The specific amount of the expenditure.
- (2) The specific use of the expenditure.
- (3) A finding by the board of directors that the proposed use of funds complied with the restrictions under subsection (a).

The money in the improvement reserve fund may not be considered in determining the corporation's property tax levy under this chapter or IC 6-1.1.

The money in the improvement reserve fund at the end of the fiscal year does not revert to the general fund. [IC 36-9-4-57]

### AUTHORITY OF INDIANA DEPARTMENT OF REVENUE

An urban mass transportation system operating under IC 36-9-4 is considered a common carrier not operating under a franchise or contract granted by a municipality and not regulated by ordinance, and is subject to the authority of the Indiana Department of Revenue under IC 8-2.1 to the same extent as any such common carrier. However, in determining the reasonableness of the fares and charges of such a system, the Indiana Department of Revenue shall consider, among other factors, the policy to foster and assure the development and maintenance of urban mass transportation systems, and it is not necessary that the operating revenues of the system be sufficient to cover the cost to the system of providing adequate service. [IC 36-9-4-58]